

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

EQUAL EMPLOYMENT OPPORTUNITY  
COMMISSION,

Plaintiff,

v.

KAISER FOUNDATION HEALTH PLAN OF  
WASHINGTON,

Defendants.

NO.

COMPLAINT

JURY TRIAL DEMAND

NATURE OF THE ACTION

This is an action under Title VII of the Civil Rights Act of 1964 and Title I of the Civil Rights Act of 1991, to correct unlawful employment practices based on race and to provide appropriate relief to Charging Party Darlene Hayden. As alleged with greater particularity below, Defendant, Kaiser Foundation Health Plan of Washington, subjected Darlene Hayden to a racially hostile work environment in violation of Title VII.

JURISDICTION AND VENUE

1. Jurisdiction of this Court is invoked pursuant to 28 U.S.C. §§ 451, 1331, 1337, 1343 and 1345. This action is authorized and instituted pursuant to Sections 706(f)(1) and (3) of Title VII

1 of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-5(f)(1) and (3) (Title VII) and  
 2 pursuant to Section 102 of the Civil Rights Act of 1991, 42 U.S.C. § 1981a.

3 2. Venue is proper in the United States District Court for the Western District of  
 4 Washington because the alleged unlawful employment practices were committed within the Western  
 5 District.  
 6

### 7 PARTIES

8 3. Plaintiff, the Equal Employment Opportunity Commission (the Commission), is the  
 9 agency of the United States of America charged with the administration, interpretation and  
 10 enforcement of Title VII and is expressly authorized to bring this action by Sections 706(f)(1) and  
 11 (3) of Title VII, 42 U.S.C. § 2000e-5(f)(1).  
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13 4. At all relevant times, Defendant, Kaiser Foundation Health Plan of Washington  
 14 (Kaiser), has continuously been a non-profit corporation, doing business in the State of Washington  
 15 and has continuously had at least 15 employees.  
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17 5. At all relevant times, Kaiser has continuously been an employer engaged in an  
 18 industry affecting commerce under Sections 701(b), (g) and (h) of Title VII, 42 U.S.C. §§ 2000e(b),  
 19 (g) and (h).  
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### 21 ADMINISTRATIVE PROCEDURES

22 6. More than thirty days prior to the institution of this lawsuit, Darlene Hayden  
 23 (Hayden) filed a charge with the Commission alleging violations of Title VII by Kaiser.

24 7. The Commission provided Kaiser notice of the charge of discrimination.

25 8. On August 20, 2021, the Commission issued to Kaiser a Letter of Determination  
 26 finding reasonable cause to believe that Kaiser violated Title VII and inviting Kaiser to join with the  
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Commission in informal methods of conciliation to endeavor to eliminate the unlawful employment practices and provide appropriate relief.

9. The Commission communicated with Kaiser to provide Kaiser an opportunity to remedy the discriminatory practices described in the Letter of Determination.

10. The Commission was unable to secure from Kaiser a conciliation agreement acceptable to the Commission.

11. On September 13, 2021, the Commission issued to Kaiser notice that efforts to conciliate Hayden's charge were unsuccessful and that further efforts would be futile or non-productive.

12. All conditions precedent to the institution of this lawsuit have been fulfilled.

### STATEMENT OF CLAIMS

13. Since at least October 2018, Kaiser has engaged in unlawful employment practices at its Tacoma Medical Center, in violation of Section 703(a)(1) of Title VII, 42 U.S.C. 2000(e)-2(a)(1).

14. Charging Party, Darlene Hayden, is an African American woman who works for Kaiser as a Laboratory Assistant.

15. Beginning in or around October 2018 and continuing through at least August 2019, one of Hayden's non-Black co-workers, also a Laboratory Assistant, subjected Hayden to racially offensive slurs and epithets.

16. In or around October 2018, Hayden's co-worker used the racial slur, "nigga" while speaking to Hayden. Hayden informed her co-worker that she found the term offensive and asked her not to use it again.

1           17.     Hayden's co-worker ignored Hayden's requests to stop using racial epithets and  
2 repeated her use of "nigga" several times through at least August 2019. The co-worker also  
3 displayed a meme to Hayden that contained the epithet "nigger," used the word "wigga," a  
4 portmanteau of White and "nigger," and threatened that she wanted to slash Hayden's tires and break  
5 her car windows after learning Hayden had reported her offensive behavior.  
6

7           18.     Hayden objected each time her co-worker used racially offensive language. Between  
8 February 2019 and April 2019, Hayden reported the co-worker's conduct separately to two Lead  
9 Laboratory Assistants, who both elevated the complaints to Kaiser's Ancillary Services Manager,  
10 who was responsible for overseeing the department. The behavior did not stop.  
11

12           19.     When the behavior persisted, Hayden emailed Kaiser's Human Resources Service  
13 Center in April 2019 and asked for someone to contact her regarding her co-worker's derogatory  
14 comments. The Human Resources Center did not intercede, and the behavior continued.  
15

16           20.     In June 2019, Hayden registered another complaint with Kaiser's Compliance  
17 Hotline. Kaiser assigned an Employee Labor Relations Consultant (Consultant) to respond. The  
18 Consultant conducted an inadequate investigation, including, failing to interview key witnesses  
19 named in Hayden's hotline complaint who could corroborate Hayden's allegations. Kaiser's  
20 Consultant recommended against disciplining Hayden's co-worker and closed the file.  
21

22           21.     Hayden alerted Kaiser's Consultant about additional incidents involving the co-  
23 worker in August 2019. Nevertheless, Kaiser did not take any disciplinary action against the co-  
24 worker.  
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24. The unlawful employment practices complained of in paragraphs 13-22 above were intentional.

25. The unlawful employment practices complained of in paragraphs 13-22 above were done with malice or with reckless indifference to the federally protected rights of the Darlene Hayden.

Wherefore, the Commission respectfully requests that this Court:

A. Grant a permanent injunction enjoining Kaiser, its officers, agents, servants, employees, attorneys, and all persons in active concert or participation with it, from failing to prevent and failing to promptly correct offensive, abusive, intimidating and hostile work environments on the basis of race and engaging in any other employment practice that discriminates on the basis of race.

B. Order Kaiser to institute and carry out policies, practices, and programs which provide equal employment opportunities for African Americans and which eradicate the effects of its past and present unlawful employment practices.

C. Order Kaiser to make Darlene Hayden whole by providing compensation for past and future pecuniary losses resulting from the unlawful employment practices described in paragraphs 13-22 above in amounts to be determined at trial.

D. Order Kaiser to make Darlene Hayden whole by providing compensation for past and future non-pecuniary losses resulting from the unlawful employment practices described in paragraphs 13-22 above, including inconvenience, pain and suffering, loss of enjoyment of life, anxiety, stress, and humiliation, in amounts to be determined at trial.

E. Order Kaiser to pay Darlene Hayden punitive damages for its malicious and reckless conduct, as described in paragraphs 13-22 above, in amounts to be determined at trial.

F. Grant such further relief as the Court deems necessary and proper in the public interest.

G. Award the Commission its costs of this action.

# JURY TRIAL DEMAND

26. The Commission requests a jury trial on all questions of fact raised by its complaint.

Dated this 30th day of September, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that on this date, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system.

DATED this 30th day of September, 2021

/s/ Rebecca Eaton

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